84-1440

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NO._____

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1984

ALWIN E. HOPFMANN, GREGORY HESSION,
CLARENCE PERKINS, CLARENCE PAULIN,
and BETH SULLIVAN,

Appellants,

v.

MICHAEL JOSEPH CONNOLLY,
FRANCIS X. BELLOTTI, CHESTER G. ATKINS,
and THE DEMOCRATIC STATE COMMITTEE OF
MASSACHUSETTS,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT
OF APPEALS FOR THE FIRST CIRCUIT

Appendix, Vol.2

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14 pp

CONSTITUTIONAL AND STATUTORY PROVISIONS:

A. CONSTITUTIONAL PROVISIONS

Art. I, Sec. 3, Cl. 3:

No Person shall be a Senator who shall not have attained the Age of thirty years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

Art. I, Sec. 4, Cl. 1:

The Times Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of Chusing Senators.

First Amendment:

Congress shall make no law...abridging the freedom of speech,...or of the right of the people peacably to assemble, and to petition the government for a redress of grievances.

XIVth Amendment:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any personwithin its jurisdiction the equal protection of the laws.

XVIIth Amendment:

The Senate of the United States shall be composed of Two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

When vacancies happen in the representation of any State in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

STATUTES:

42 U.S.C. 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or Territory, subjects, or causes to be subjected, any citizen of the United States or other person withn the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

28 U.S.C. 1652:

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

2 U.S.C. 431(1):

The term "election" means--
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(B) a convention ..of a political party which has authority to nominate a candidate.

2 U.S.C. 431(2):

The term "candidate" means an individual who seeks nomination for election...to Federal office...

2 U.S.C. 431 (3)

The term "Federal office" means the office of Senator ...in Congress..."

Mass. Acts 1973 c. 429:

Chap. 429 AN ACT REPEALING THE LAW PROVIDING FOR PRE-PRIMARY CONVENTIONS OF POLITICAL PARTIES.

Be it enacted, etc., as follows:

SECTION 1. Chapter 52 of the General Laws is hereby amended by striking out section 9, as most recently amended by

section 1 of chapter 920 of the acts of 1971, and inserting in place thereof the following section:--

Section 9. City and town committees, respectively, shall fix the number of members of ward and town committees to be elected at the presidential primaries,not less than three nor more than thirty-five for each ward and each town. Notice of the number of committee members to be elected shall be given by the city or town committeee, as the case may be, to the state secretary on or before the second Tuesday in January of the year in which such persons are to be elected. In case a city or towon committee fails to fix the number of members of a ward or town committee and to give such notice, the number of members of such ward or town committee to be elected shall not exceed ten.

SECTION 1A. The first sentence of section 2 of chapter 53 of the General Laws, as most recently amendedby section 1 of chapter 407 of the acts of 1966, is hereby amended by striking out, in lines 3 and 4, the words "and except as provided in section fifty-four,".

SECTION 2. Said chapter 53 is hereby amended by striking out section 5, as most recently amended by section 1 of chapter 56 f the ats of 1966, and inserting

in place thereof the following section:--

Section 5. Every certificate of nomination shall state such facts as are required by section eight and shall be signed and sworn to by the presiding officer and by the secretary of the caucus or convention, who shall add to their signatures their residences. The secretary shall within the seventy-two hours succeeding five oclock in the afternoon of the day upon which the caucus was held or the session of the convention terminated, and within the time specified in section ten, file such certificate at the place specified in section nine.

No such certificate of nomination, except for presidential electors, shall be received or be valid unless the written acceptance of the candidates thereby nominated shall be filed therewith.

SECTION 3. Said chapter 53 is hereby further amended by striking out section 34, as most recently amended by chapter 41 of the acts of 1970, and inserting in place therof the following section:--

Section 34. Atthe top of each ballot shall be printed the words "Official ballotof the (here shall follow the party name)". On the back of each ballot when folded shall be printed the same words, followed by the number of the precinct and ward or the name of the town for which the ballot is prepared, the date of the

primary and for state primaries a facsimile of the signatures of the city or town clerk. Names of candidates for each elective office shall be arranged alphabetically according to their surnames except as othewise provided.

Names of candidates for nomination for all offices to be voted for at a state primary of which they are the elected incumbents or the incumbents chosen by the senate and house of representatives, or appointed by the governor, or appointed by the justices of the supreme judicial or superior court, or appointed by the county commissioners and the clerk of the courts for a county, shall be placed first in alphabetical order and names of other candidates shall follow in like order.

Names of candidates for state committee who are either elected or appointed incumbents shall be placed first in alphabetical order, and names of other candidates for said office shall follow in like order.

Names of candidates for ward or town committees and for delegates to national conventions shall be arranged in groups in such order as may be determined by lot, under the direction of the state secretary, who shall notify each state committee and give a representative of each such committee an opportunity to present. When necessary, groups may be

printed on the ballot in two or more columns; provided, howeverthat only one heading designating the number of membesr to be elected to such committee or as delegates to such convention shall be printed.

Against the name of a candidate for an elective office, for delegate or alternate delegate to a national convention, for a ward or town committee, or for state committee, shall be printed the street and number, if any, of his residence.

Against the name of a candidate for an elective office shall be printed the statement contained in the nomination paper placing him in nomination, except where vacancies caused by death, withdrawal or physical disability are filled.

Except where vacancies caused by death, withdrawal or physical disability are filled, no names shall be printed on a ballot other than those presented on nomination papers. On ballots at city and town primaries, and preliminary elections except where city charters provide otherwise, names of candidates for offices of which they are elected incumbents, or the incumbents chosen by vote of the board of aldermen or city council in a city, or the incumbents chosen by joint convention of the board of aldermen or city council

and school committee, shall be placed first in alphabetical order according to their surnames, to be followed by the names of all other candidates for such offices in alphabetical order. Against the name of each such candidate there shall be printed, if the candidate requests, a statement in not more than eight words setting gorth the public offices which he holds or has held, showing clearly that he is a former incumbent thereof if such is the case and, if he is an elected incumbent of an office for which he seeks renomination, that he is a candidate for such renomination; and if he is a veteran, as defined in section twenty-one of chapter thirty-two, the word "veteran" may be used. Immediately following the names of candidates on ballots at city and town primaries, and prliminary elections except where city charters provide otherwise, blank spaces equal to the number of persons tobe chosen shall be provided for the insertion of other names. Immediately following the names of candidates on ballots at state and presidential primaries, where there are fewernames than there are persons to be chosen, blank spaces shall be provided, equal in number to the deficiency, for the insertion of other names.

The number of persons to be voted for the different offices shall be stated on

the ballot.

The form of ballots and the arrangement of printed matter thereon shall be in general the same as that of the official state ballots, except as otherwise provided in this chapter.

SECTION 4. Section 44 of said chapter 53 is hereby amended by striking out the first and second sentences and inserting in place thereof the following two sentences:--

The nomination of candidates for nomination at state primaries shall be by nomination papers. In the case of offices to be filled by all the voters of the commonweath[sic], nomination papers shall be signed in the aggregate by at least ten thousand voters.

SECTION 5. Sections fifty-four, fifty-four C and fifty-four D of said chapter fifty-three are hereby repealed.

(This bill, returned by the Governor, to the House of Representatives, the branch in which it had originated, with his objections thereto, was passed by the House of Representatives, June 19, 1973, and, in concurrence, by the Senate, June 19, 1973, the objections of the Governor notwithstanding, in the manner prescribed by the Constitution; and thereby has "the force of a law".)

Mass. Gen. Laws, Chapts. 53, 54,
Method of Nomination Papers:

Mass. Gen. Laws, Chapt. 53, Sec. 2:

...candidates of political parties for all

elective offices,...shall be elected, in primaries or caucuses,...All nominations and elections in primaries and caucuses shall be by direct plurality vote. No candidates shall be nominated, and no member of a political committee or coonvention delegate elected, in any other manner than is provided in this chapter....

Mass. Gen. Laws, Chapt. 53. Sec. 34:

Except where vacancies caused by death, withdrawal or physical disability are filled, no names shall be printed on a ballot other than those presented on nomination papers.

Mass. Gen Laws, Chapt. 53, Sec. 44:

The nomination of candidates for nomination at state primaries shall be by nomination papers. In the case of...United States senator, nomination papers shall be signed in the aggregate by at least ten thousand voters;

Mass. Gen. Laws, Chapt.54, Sec. 41:

Ballots for the use of voters in a voting precinct, polling place or town shall contain the names of all candidates duly

nominated for election therein,...

Place of "Chusing" of United States senators:

Mass. Gen. Laws, Chapt.53, Sec. 28:

State primaries shall be held on the seventh Tuesday preceding biennial state elections....
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Except in Boston, primaries shall be held wholly or partly by wards, precincts or towns, as the aldermen or selectmen may designate.

Mass. Gen. Laws, Chapt. 54, Sec. 24:

The aldermen in cities, except where city charters provide otherwise, and the selectmen of towns divided into voting precincts, shall, twenty days at least before the biennial state...election..., designate the polling place for each voting precinct and cause it to be suitably fitted up and prepared therefor.